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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,109	12/15/2003	Jianxin Wang	063170.6722	5512
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BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER LE, MIRANDA	
			ART UNIT 2167	PAPER NUMBER
			NOTIFICATION DATE 04/10/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/737,109

Applicant(s)

WANG, JIANXIN

Examiner

Miranda Le

Art Unit

2167

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-34.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


JOHN COTTINGHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100


Miranda Le
April 02, 07

Continuation of 11. does NOT place the application in condition for allowance because: Applicants' arguments do not overcome the final rejection.

Applicant's arguments have been fully considered but they are not persuasive. The Examiner has thoroughly reviewed Applicants' arguments but firmly believes that the cited reference reasonably and properly meet the claimed limitation for the following reasons:

1. Tsuchiya teaches "information being backed up is transferred directly from the storage system to the backup storage system without going through a server and information being restored is transferred directly from the backup storage system to the storage system without going through the server" (Claim 1).

First, as shown in Fig 32 of Tsuchiya:

a backup system corresponds to system in Fig. 32

the storage system corresponds to Computer 11

the backup storage system corresponds to backup medium 15.

It should be noted that the backup data is transferred directly from the backup medium 15 to the computer 11 (See Fig. 32) without going through the server.

Second, as shown in Fig. 17 of Tsuchiya:

a backup system can be equivalent with system in Fig. 17

the storage system can be equivalent with Sharing disk 13

the backup storage system can be equivalent with Backup Medium

It should be noted that, in Fig. 17, the copy management unit copies data from the Sharing disk 13 to the Backup Medium, See DATA arrow, without going through the server.

2. Tsuchiya teaches "examining the attributes of each file and determining whether a file is resident or nonresident" (Claim 34).

The attributes of each file equates to meta information (As meta-information, file names and attributes of all the files included in the directory tree, or file names and attributes of the files that belong to the group are used (col. 13, lines 42-47).

a file is resident equates to all the files of directories A and C are included in a group (col. 13, lines 21-25)

a file is nonresident equates to file d of a directory D is eliminated from the group (col. 13, lines 21-25).

The step of examining equates to the group management unit 23 selects as a group, the remaining files a, b, c, e and f other than the file d among all the files that belong to directories A and C (col. 13, lines 21-25).

Therefore, it is evident that the claim language as presented is still read on by the Tsuchiya reference at the cited paragraph in the claim rejections.